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LOS ANGELES WATERKEEPER®

December 2, 2016

VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Shawn Kim
Prime Metals Los Angeles
6069 Maywood Avenue
Huntington Park, CA 90255

Ik Dong Kim
Prime Metals USA Inc
1440 N. Harbor Blvd #640
Fullerton CA 92835

Re: Clean Water Act Notice of Intent to Sue/60-Day Notice Letter
Prime Metal Products Violations of General Industrial Permit

Dear Messrs. Kim:

Please accept this letter on behalf Los Angeles Waterkeeper ("Waterkeeper") regarding Prime Metal USA, Inc.'s (DBA Prime Metals Los Angeles) ("Prime Metals") violations of the State Water Resources Control Board Water Quality Order No. 97-03-DWQ, Natural Pollutant Discharge Elimination System ("NPDES"), General Permit No. CAS000001, and Waste Discharge Requirements for Discharges of Storm Water Associated with Industrial Activities Excluding Construction Activities ("Industrial Permit").[1] This letter constitutes Waterkeeper's notice of intent to sue for violations of the Clean Water Act and Industrial Permit for the Prime Metals Los Angeles facility located at 6069 Maywood Avenue Huntington Park, CA 90255 ("Facility"), as set forth in more detail below. This letter further constitutes notice of Waterkeeper's intent to sue for such violations for the former Ace Recycling, LLC Facility at the same location.

Section 505(b) of the Clean Water Act requires that sixty (60) days prior to the initiation of a citizen's civil lawsuit in Federal District Court under Section 505(a) of the Act, a citizen must give notice of the violations and the intent to sue to the violator, the Administrator of the U.S. Environmental Protection Agency, the Regional Administrator of the U.S. Environmental Protection Agency for the region in which the violations have occurred, the U.S. Attorney General, and the Chief Administrative Officer for the State in which the violations have occurred. (33 U.S.C. § 1365(b)(1)(A)). This letter provides notice of Prime Metal's Clean Water Act violations and Waterkeeper's intent to sue.

[1] On April 1, 2014, the State Water Resources Control Board adopted Order No. 2014-0057-DWQ, which amends the Industrial Permit. These amendments became effective on July 1, 2015. All references to the Industrial Permit are to the Permit as it existed at the time of the violations noted herein.

I. Citizen Group

Los Angeles Waterkeeper is a non-profit 501(c)(3) public benefit corporation organized under the laws of California with its main office at 120 Broadway, Suite 105, Santa Monica, California 90401. Founded in 1993, Waterkeeper has approximately 3,000 members who live and/or recreate in and around the Los Angeles area. Waterkeeper is dedicated to the preservation, protection, and defense of the inland and coastal surface and groundwaters of Los Angeles County from all sources of pollution and degradation. To further this mission, Waterkeeper actively seeks federal and state implementation of the Clean Water Act. Where necessary, Waterkeeper directly initiates enforcement actions on behalf of itself and its members.

Members of Waterkeeper reside in Los Angeles County, and near the Los Angeles River ("Receiving Water"). As explained in detail below, Prime Metals continuously discharges pollutants into the Los Angeles River, in violation of the Clean Water Act and the Storm Water Permit. Waterkeeper members use the Receiving Water to swim, boat, kayak, bird watch, view wildlife, hike, bike, walk, and run. Additionally, Waterkeeper members use the water to engage in scientific study through pollution and habitat monitoring and restoration activities. The unlawful discharge of pollutants from the Facility into the Receiving Water impairs Waterkeeper members' use and enjoyment of such water. Thus, the interests of Waterkeeper's members have been, are being, and will continue to be adversely affected by Prime Metals' failure to comply with the Clean Water Act and the Storm Water Permit.

II. Storm Water Pollution and the General Industrial Permit

A. The Owner and Operator of the Facility

Information available to Waterkeeper indicates Prime Metals is the owner and operator of the Facility. Prime Metals is an active California corporation and Ik Dong Kim is its registered agent.

B. Duty to Comply

Under the Clean Water Act, the discharge of any pollutant to a water of the United States is unlawful except in compliance with certain provisions of the Clean Water Act. (See 33 U.S.C. § 1311 (a)). In California, any person who discharges storm water associated with industrial activity must comply with the terms of the Industrial Permit in order to lawfully discharge.

The Prime Metals Owners and/or Operators conduct scrap metal recycling at the Facility. The Facility SIC Code is 5093, Scrap and Waste Materials.

Prime Metals enrolled as a discharger subject to the Industrial Permit on September 8, 2015 for its facility located at 6069 Maywood Avenue, Huntington Park, CA 90255 with WDID Number 419I026091. Prime Metals' Notice of Intent to Enroll identifies "Los Angeles River Reach 2" as the receiving water.

Pursuant to Section I.A.8 of the Industrial Permit, a facility operator must comply with all conditions of the Industrial Permit. (Industrial Permit, §I.A.8. [dischargers must "comply with all requirements, provisions, limitations, and prohibitions in this General Permit."]). Failure to comply with the Industrial Permit is a Clean Water Act violation. (Industrial Permit §XXI.A.). Any non-compliance

further exposes an owner/operator to an (a) enforcement action; (b) Industrial Permit termination, revocation and re-issuance, or modification; or (c) denial of an Industrial Permit renewal application. As an enrollee, Prime Metals has a duty to comply with the Industrial Permit and is subject to all of the provisions therein.

C. Storm Water Pollution

With every significant rainfall event, millions of gallons of polluted storm water originating from industrial operations such as the Facility pour into storm drains and local waterways. The consensus among agencies and water quality specialists is that storm water pollution accounts for more than half of the total pollution entering surface waters each year. Such discharges of pollutants from industrial facilities contribute to the impairment of downstream waters and aquatic dependent wildlife. These contaminated discharges can and must be controlled for the ecosystem to regain its health.

Although pollution and habitat destruction have drastically diminished once-abundant and varied fisheries, these waters are still essential habitat for dozens of fish and bird species as well as macro-invertebrate and invertebrate species. Storm water and non-storm water contaminated with sediment, heavy metals, and other pollutants harm the special aesthetic and recreational significance that surface waters have for people in local communities. The public's use of local waterways exposes many people to toxic metals and other contaminants in storm water discharges. Non-contact recreational and aesthetic opportunities, such as wildlife observation, are also impaired by polluted discharges to local waterways.

Polluted discharges from facilities within Sector N, Scrap Metal Recycling and Waste Recycling Facilities, commonly contain numerous pollutants, including: PCBs, oil and grease, lubricants, paint pigments or additives, heavy metals, ionizing radioactive isotopes, transmission and brake fluids, fuel, battery acid, lead acid, antifreeze, benzene, chemical residue, heating oil, petroleum products, solvents, ionizing radioactive isotopes, infectious/bacterial contamination, asbestos, metals, nitrogen, battery acid, oily wastes, chemical residue, and mercury.[1]

Photos on the Facility's website demonstrate considerable piles of scrap materials, much of it rusty, surrounded by significant amounts of dirt, debris, and metal shavings. (See Exhibit A, attached).

D. Facility Industrial Activities

Information available to Waterkeeper indicates the Facility is approximately 2.88 acres in size and is 100 percent impervious. The Facility consists of an administration building, maintenance building, and steel storage area. Industrial materials at the Facility include, but are not limited to: raw materials, recyclable materials, intermediate products, final products, by-products and wastes, fuels, and finished materials. (SWPPP, p. 3). According to Prime Metals' SWPPP, the Facility receives scrap metal (cast iron, stainless steel, bushelling, plate and structural) and moves, separates and loads the scrap metal for transport. (SWPPP, pp. 3-4).

According to the Prime Metals' website, the Facility purchases "metal (ferrous and non-ferrous) from a myriad of sources including industrial manufacturers, metal fabricators and other scrap dealers."[2]

[1] See https://www.epa.gov/sites/production/files/2015-10/documents/sector_n_scraprecycling.pdf
[2] http://primemetalsusa.com/yard/los-angeles/

The Facility boasts possession of "the machinery to sort, shear, bale and torch all material according to the exact requirements of [its] end-users" and "flexibility by accepting both processed and non-processed material." The Facility also claims an ability to "procure 4-5K metric tons every month."

E. Receiving Waters

The Facility discharges into the Los Angeles River, specifically Reach 2. According to the 2012 303(d) List of Impaired Water Bodies, Reach 2 of the Los Angeles River is impaired for pollutants such as copper, lead, and oil.[3] Reach 1 of the Los Angeles River is impaired by, among other pollutants, copper, lead, zinc, and pH. Polluted discharges from the Facility cause and/or contribute to the degradation of these already impaired surface waters and aquatic dependent wildlife. The pollutants discharged into Reaches 1 and 2 of the Los Angeles River flow to the Pacific Ocean via the Los Angeles River Estuary and Los Angeles Harbor. For the Los Angeles area aquatic ecosystem to regain its health, contaminated storm water discharges, including those from the Facility, must be eliminated.

F. Failure to Monitor and Report

The Prime Metals Owners and/or Operators have failed to report all monitoring data as required under the Industrial Permit, which became effective July 1, 2015. Prime Metals is required to sample two qualifying storm events during the first half of the reporting period, and two during the latter half. (Industrial Permit, §XI.B.2). All monitoring data must be uploaded to SMARTS within 30 days of obtaining all results for each sampling event. (Industrial Permit, §XI.B.11.a.). However, the Prime Metals Owners and/or Operators failed to meet these requirements for the 2015-2016 monitoring year. Prime Metals has monitored only once during the first half of the reporting period and once during the latter half – in violation of Section XI.B.2. Further, Prime Metals failed to "submit all sampling and analytical results for all individual" samples to SMARTS within 30 days of obtaining the results. (Industrial Permit, §XI.B.11.a.). The ad hoc monitoring report for sampling conducted on January 5, 2016 does not include the analytical data from the lab, and it was not uploaded to SMARTS until July 19, 2016, well after the 30-day deadline.

Notably, Prime Metals' neighbor, Cal-Pac Chemicals, located at 6231 Maywood Avenue, was able to monitor on January 6, 2016 and Two Star Trucking, located at 5711 Maywood Avenue, was able to monitor on February 17, 2016. Numerous additional qualifying rain events occurred during the 2015-2016 reporting period. (See Exhibit B, attached).

Further, though Prime Metals identified two discharge locations in its 2015-2016 Annual Report and SWPPP and on its Facility Site Map, it has only sampled one of its discharge locations (identified as south sump). (SWPPP, p. 11, Section 2.2 [identifying two discharge locations as North Drain and South Drain). The Industrial Permit requires samples from *each* discharge location. (Industrial Permit, §XI.B.5).

In addition, Prime Metals failed to sample for Oil and Grease, a minimum parameter required under the Industrial Permit.[4] (Industrial Permit, §XI.B.6). As noted in the Permit Fact Sheet, Total

[3] 2012 Integrated Report – All Assessed Waters, available at: http://www.waterboards.ca.gov/water_issues/programs/tmdl/integrated2012.shtml (last accessed on December 1, 2016).

[4] Indeed, Prime Metals noted oil was a pollutant present at the Facility in its 2015-2016 Annual Report and identified oil and grease as potential pollutant sources in its SWPPP. (SWPPP, p. 5, Table 1-4). "Industrial activities

Organic Carbon and Oil and Grease tests "are not synonymous, duplicative, or interchangeable." (Industrial Permit, Fact Sheet, p. 52). Therefore, the Industrial Permit "requires all Dischargers analyze samples for O&G since almost all Dischargers with outdoor activities operate equipment and vehicles can potentially generate insoluble oils and greases. Dischargers with water soluble-based organic oils may be required to *also* test for TOC." (*Id.*, emphasis added).

The Prime Metals Owners and/or Operators had numerous opportunities to sample but failed to do so, and failed to monitor all locations and all constituents as required. They are thus subject to penalties in accordance with the Industrial Permit – punishable by a minimum of $51, 570 per day of violation occurring after November 2, 2015 and $37,500 per day of violation occurring before November 2, 2015. (33 U.S.C. §1319(d); 40 CFR 19.4; Industrial Permit, §XXI.Q.1).

G. Failure to Develop and/or Implement BMPs that Achieve Compliance with Best Available Technology Economically Achievable and Best Conventional Pollutant Control Technology

The Industrial Permit requires dischargers to reduce or prevent pollutants associated with industrial activity in storm water discharges and authorized non-storm water discharges through implementation of the Best Available Technology Economically Achievable (BAT) for toxic pollutants[1] and Best Conventional Pollutant Control Technology (BCT) for conventional pollutants.[2] Specifically, the Permit "requires control of pollutant discharges using BAT and BCT to reduce and prevent discharges of pollutants, and any more stringent effluent limitations necessary for receiving waters to meet applicable water quality standards." (Industrial Permit, §I.D.32; see also, §V.A.).

EPA Benchmarks are the pollutant concentrations which generally indicate whether a facility has successfully developed or implemented BMPs that meet the BAT/BCT. Discharges with pollutant concentration levels above EPA Benchmarks and/or the CTR demonstrate that a facility has failed to develop and/or implement BMPs that achieve compliance with BAT for toxic pollutants and BCT for conventional pollutants. The Facility's monitoring data demonstrates consistent exceedances of not only the CTR, but also EPA benchmarks. (See monitoring data below).

Thus, Prime Metals' storm water discharge sampling data demonstrates the Facility has not developed and/or implemented BMPs that meet the standards of BAT/BCT. (See *Baykeeper, supra*, 619 F.Supp. 2d at 925 ["Repeated and/or significant exceedances of the Benchmark limitations should be relevant" to the determination of meeting BAT/BCT]).

Further information available to Waterkeeper indicates Prime Metals has failed to implement and/or develop BMPs that meet BAT and BCT. As noted in the Facility's SWPPP, minimal, ineffective advanced BMPs are used at the Facility. (SWPPP, p. 10). Notably, no filtration devices are installed to

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and associated pollutants at PMLA appear to have some likelihood to contribute to copper, lead, and oil impairments." (SWPPP, p. 6).

[1] Toxic pollutants are found at 40 CFR § 401.15 and include, but are not limited to: lead, nickel, zinc, silver, selenium, copper, and chromium.

[2] Conventional pollutants are listed at 40 CFR § 401.16 and include biological oxygen demand, total suspended solids, pH, fecal coliform, and oil and grease.

address the Facility's discharge of metals and oil and grease. Vehicle maintenance is conducted outdoors and filter cloths and check dams are of limited usefulness once clogged, resulting in flooding. (SWPPP, Appendix C, pp. 2-3). As noted above, the Facility's own website photos document routine presence of outdoor storage of metals, significant debris and metal shavings throughout the Facility, and rusty metals stored outside, without cover. (See Exhibit A).

Notably, Permit Effluent Limitation V.A. is a separate requirement, independent of the iterative process triggered by exceedances of the Permit's NALs. "The NALs are not intended to serve as technology-based or water quality-based numeric effluent limitations. The NALs are not derived directly from either BAT/BCT requirements or receiving water objectives." (Industrial Permit, §I.M.63). Thus, the NALs do not represent technology-based criteria relevant to determine whether an industrial facility has implemented BMPs that achieve BAT/BCT. Therefore, development of an Exceedance Response Action Plan pursuant to Permit Section XII neither addresses nor alleviates the aforementioned violations of Effluent Limitation V.A.

In summary, the Prime Metals Owners and/or Operators are seriously in violation of Section V.A. of the Industrial Permit. Every day Prime Metals operates with inadequately developed and/or implemented BMPs in violation of the BAT/BCT requirements is a separate and distinct violation of the Permit and Section 301(a) of the Clean Water Act. (33 U.S.C. § 1311 (a)). Therefore, Prime Metals has been in daily and continuous violation of the BAT/BCT requirements of the Industrial Permit every day since at least December 2, 2011, and is subject to penalties for all such violations.[5]

These violations are ongoing and Prime Metals will continue to be in violation every day it fails to develop and/or implement BMPs that achieve BAT/BCT to prevent or reduce pollutants associated with industrial activity in storm water discharges at the Facility.

H. The Prime Metals Facility Discharges Contaminated Storm Water in Violation of the General Industrial Permit

The Prime Metal Owners and/or Operators' monitoring reports indicate consistent exceedances and violations of the Industrial Permit. Discharge Prohibition Sections III.C-D prohibit storm water discharges and authorized non-storm water discharges which cause or threaten to cause pollution, contamination, or nuisance.

Receiving Water Limitation VI.A. of the Permit prohibits storm water discharges from causing or contributing to an exceedance of any applicable water quality standards in any affected receiving water. Section VI.B. also prohibits discharges that adversely impact human health or the environment. In addition, Receiving Water Limitation VI.C. of the Industrial Permit prohibits discharges that contain pollutants in quantities that threaten to cause pollution or a public nuisance.

The California Toxics Rule ("CTR"), 40 C.F.R. 131.38, is an applicable water quality standard. (*Baykeeper v. Kramer Metals, Inc.* (C.D.Cal. 2009) 619 F.Supp.2d 914, 926). A permittee violates the Industrial Permit Receiving Water Limitations when it "causes or contributes to an exceedance of" such a standard, including the CTR." (*Id.* at 927).

[5] For violations prior to September 8, 2015, liability extends from Ace Recycling, LLC (Prime Metals' predecessor) operations. (See Section I, below).

If a discharger violates Water Quality Standards, the Industrial Permit and the Clean Water Act require that the discharger implement more stringent controls necessary to meet such Water Quality Standards.(33 U.S.C. § 1311(b)(I)(C); Industrial Permit, §XX.B.). The Prime Metals Owners and/or Operators have failed to comply with this requirement, routinely violating Water Quality Standards without implementing BMPs to achieve BAT/BCT or revising the Facility's SWPPP pursuant to Industrial Permit Section X.B.1.

As demonstrated by sample data submitted by Prime Metals, from enrollment on September 8, 2015 through the present, the Prime Metals Owners and/or Operators have discharged and continue to discharge storm water containing pollutants at levels in violation of water quality prohibitions and limitations during every significant rain event. The Prime Metals Facility's sampling data reflects numerous discharge violations (see below). Prime Metals' own sampling data is not subject to impeachment. (*Baykeeper, supra*, 619 F.Supp. 2d at 927, citing *Sierra Club v. Union Oil Co. of Cal.*, (9th Cir. 1987) 813 F.2d 1480, 1492 ["when a permittee's reports indicate that the permittee has exceeded permit limitations, the permittee may not impeach its own reports by showing sampling error"]).

This data further demonstrates the Prime Metals Facility continuously discharges contaminated storm water during rain events which have not been sampled.

PRIME METALS MONITORING DATA						
No.	**Date**	**Discharge Point**	**Parameter**	**Units**	**Result**	**Benchmark/CTR**
1	9/15/2015	South Sump	Zinc*	mg/L	3.3	.12
2	9/15/2015	South Sump	Lead*	mg/L	.079	.065
3	9/15/2015	South Sump	Iron	mg/L	4.39	1.0
4	9/15/2015	South Sump	Aluminum	mg/L	3.8	.75
5	9/15/2015	South Sump	Copper*	mg/L	.17	.013
6	9/15/2015	South Sump	TSS	mg/L	102	100
7	9/15/2015	South Sump	COD	mg/L	221	120
8	1/5/2016	South Sump	Zinc*	mg/L	500	.12
9	1/5/2016	South Sump	Lead*	mg/L	44	.065
10	1/5/2016	South Sump	Iron	mg/L	3.33	1.0
11	1/5/2016	South Sump	Aluminum	mg/L	1900	.75
12	1/5/2016	South Sump	Copper*	mg/L	72	.013
*California Toxics Rule constituent						

I. Ace Recycling LLC

Publicly available information indicates that the Prime Metals Facility was formerly operating as the Ace Recycling Facility, owned and/or operated by Ace Recycling LLC. and/or Ace Metals, LLC. The State Board approved the Ace Facility NOI on November 30, 2012. The State Board's letter acknowledging receipt of the Ace Facility's NOI identifies the facility name and address as "Ace

Recycling, L.L.C, 6069 Maywood Ave, Huntington Park" and the operator as "Ace Recycling, L.L.C." Additionally, this document lists the Waste Discharge Identification ("WDID") number for the Ace Facility as 4-19I023952.

The Ace Facility's NOI listed its Standard Industrial Classification ("SIC") Code as 5093 (Scrap and Waste Materials). Information available to Waterkeeper indicates that Ace Facility Owners and/or Operators conducted scrap metal storage and processing as well as other industrial activities that require coverage under the Industrial Permit.

In 2012, Waterkeeper sent Ace Recycling, LLC a 60-day notice letter regarding prior Clean Water Act and Industrial Permit violations at the Facility. At the time, Ace Recycling, LLC was enrolled as the Facility operator. Upon receiving a notice letter from Waterkeeper, however, Ace Recycling, LLC filed a Notice of Termination and cancelled its registration with the Secretary of State. Notably, however, the Prime Metals USA, Inc website boasts that "Prime Metals Los Angeles (PMLA) was established in early 2010."[6] The website also claims, "In 2012, our output reached an average of 5K metric tons of material on a monthly basis." Likewise, the Facility SWPPP notes "Storm water samples collected in 2012, 2013, and 2014 consistently showed that suspended solids generated by facility activities are potential pollutant sources." (SWPPP, p. 6). Thus, the Prime Metals Owners and/or Operators hold themselves out as the successors to Ace Recycling, acknowledging the current Facility is a mere continuation of the Ace Recycling Facility.

In addition, Shawn Kim remains the Facility manager and the two entities – Ace Recycling, LLC and Prime Metals USA, Inc. – share numerous officers and/or directors. Based on the aforementioned history and information available to Waterkeeper, it appears Prime Metals USA, Inc has assumed the assets and liabilities of its predecessor, Ace Recycling, LLC. (*Ray v. Alad Corp.* (1977) 19 Cal.3d 22, 28 ["As typically formulated the rule states that the purchaser does not assume the seller's liabilities unless (1) there is an express or implied agreement of assumption, (2) the transaction amounts to a consolidation or merger of the two corporations, (3) the purchasing corporation is a mere continuation of the seller, or (4) the transfer of assets to the purchaser is for the fraudulent purpose of escaping liability for the seller's debts."]). Therefore, Prime Metals is liable for all prior Clean Water Act and Industrial Permit violations of its predecessor, Ace Recycling, LLC. This includes all violations noted in Waterkeeper's Notice Letter dated November 21, 2012. (See Exhibit C). Prime Metal's liability also extends to Ace Recycling's discharge of contaminated storm water subsequent to the issuance of Waterkeeper's prior notice letters.

i. Discharges of Polluted Storm Water from the Ace Facility in Violation of Effluent Limitation B(3) of the Storm Water Permit

Between 1997 and June 30, 2015 (and during the period of Ace Recycling operations) the Industrial Permit in effect was Water Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ ("1997 Industrial Permit"). On July 1, 2015, pursuant to Order No. 2015-0057-DWQ the Permit was reissued as the current Industrial Permit. The Industrial Permit superseded the 1997 Industrial Permit, except for enforcement purposes. Accordingly, Ace Recycling (and its successor Prime Metals) are liable for violations of the 1997 Permit, and civil penalties and injunctive relief are available remedies. (See *Illinois v. Outboard Marine, Inc.*, (7th Cir. 1982) 680 F.2d 473, 480-81 [relief granted for violations of an expired permit]; *Sierra Club v. Aluminum Co. of Am.*, (N.D.N.Y. 1984) 585 F. Supp. 842, 853-54

[6] http://primemetalsusa.com/yard/los-angeles/

[holding that the Clean Water Act's legislative intent and public policy favor allowing penalties for violations of an expired permit]; *Pub. Interest Research Group of NJ v. Carter-Wallace, Inc.*, (D.N.J. 1988) 684 F. Supp. 115, 121-22 ["Limitations of an expired permit, when those limitations have been transferred unchanged to the newly issued permit, may be viewed as currently in effect"]).

Like Section I.D.32 of the current Industrial Permit, Effluent Limitation B(3) of the 1997 Industrial Permit required dischargers to reduce or prevent pollutants associated with industrial activity in storm water discharges through implementation of BMPs that achieve BAT for toxic pollutants[7] and BCT for conventional pollutants.[8] As mentioned above, EPA Benchmarks are objective standards to evaluate whether a permittee's BMPs achieve compliance with BAT/BCT standards as required by Effluent Limitation B(3) of the 1997 Industrial Permit.[9]

Storm water sampling at the Ace Facility consistently demonstrated that discharges from the Facility contained concentrations of pollutants above EPA Benchmarks. The tables below set forth the results of sampling conducted by the Ace Facility Owners and/or Operators and by Waterkeeper. Each sample result listed demonstrates an EPA Benchmark exceedance.

Sampling Conducted by the Ace Facility Owners and/or Operators Demonstrating Benchmark Exceedances

Date of Sample	Sample Location	Constituent	EPA Benchmark[10]	Sample Value	Magnitude of Exceedance[11]
02/08/2013	Location #1	Aluminum	0.75	13.9	18.53
02/08/2013	Location #1	Copper[12]	0.0123	0.320	26.02
02/08/2013	Location #1	Iron	1.0	25.3	25.3
02/08/2013	Location #1	Lead	0.069	0.326	4.72
02/08/2013	Location #1	Zinc	0.11	1.74	15.82
02/08/2013	Location #1	TSS	100	152	1.52
02/08/2013	Location #1	COD	120	375	3.13
10/09/2013	Location #1	Aluminum	0.75	80.5	107.33
10/09/2013	Location #1	Copper	0.0123	1.88	152.85
10/09/2013	Location #1	Iron	1.0	165	165
10/09/2013	Location #1	Lead	0.069	1.88	27.25

[7] Toxic pollutants include heavy metals, such as copper, lead, and zinc. *See* 40 C.F.R. § 401.15.
[8] Conventional pollutants include biochemical oxygen demand, TSS, O&G, pH, and fecal coliform. *See* 40 C.F.R. § 401.16.
[9] *See United States Environmental Protection Agency (EPA) National Pollutant Discharge Elimination System (NPDES) Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (MSGP)*, as modified effective May 27, 2009 ("Multi-Sector Permit").
[10] EPA Benchmark Values for all constituents in the tables in this Notice Letter are measured in units of mg/L, except pH which is measured in s.u. and specific conductance in umhos/cm.
[11] The magnitude of exceedance values in this table and in the subsequent tables were calculated by taking the Sample Value and dividing it by the EPA Benchmark (or CTR criteria in the table below). For example, the first Aluminum sample value (taken on 2/8/2013) of 13.9 divided by .75 (EPA Benchmark for TSS) equals 18.53. Thus the sample taken on 2/8/2013 is 18.53 times the EPA Benchmark for Aluminum.
[12] Certain pollutants, including copper, lead and zinc, are water hardness dependent. The EPA Benchmarks listed in the tables in this Notice Letter are based on a hardness of 75-100 mg/L. *See* Multi-Sector Permit, p. 102 (Subsector N Benchmark Values).

10/09/2013	Location #1	Zinc	0.11	12.3	111.82
10/09/2013	Location #1	TSS	100	2460	24.6
10/09/2013	Location #1	pH	6.0-9.0	9.05	1.01
10/09/2013	Location #1	SC[13]	200	1120	5.6
10/09/2013	Location #1	O&G	15	63.4	4.23
10/09/2013	Location #1	COD	120	1690	14.08
02/28/2014	Location #1	Aluminum	0.75	6.18	8.24
02/28/2014	Location #1	Copper	0.0123	.105	8.54
02/28/2014	Location #1	Iron	1.0	12.4	12.4
02/28/2014	Location #1	Lead	0.069	0.194	2.81
02/28/2014	Location #1	Zinc	0.11	0.995	9.05
02/28/2014	Location #1	TSS	100	186	1.86
02/28/2014	Location #1	pH	6.0-9.0	9.32	1.04

Information available to Waterkeeper, including observations of the Facility's BMPs and sampling data exhibiting consistent exceedances of EPA Benchmarks, demonstrates that the Ace Facility Owners and/or Operators have failed (and as Prime Metals continue to fail) to develop and/or implement BMPs at the Ace Facility that achieve compliance with the BAT/BCT standards.

The Ace Facility Owners and/or Operators violated Effluent Limitation B(3) of the 1997 Industrial Permit every time they discharged storm water from the Ace Facility without BMPs that achieve BAT/BCT. These discharge violations are ongoing at the Prime Metals Facility and will continue every time the Prime Metals Owners and/or Operators discharge polluted storm water without developing and/or implementing BMPs that achieve compliance with the BAT/BCT standards. Each time the Ace Facility Owners and/or Operators discharged polluted storm water in violation of Effluent Limitation B(3) of the Storm Water Permit constitutes a separate and distinct violation of the Storm Water Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). As successor of the Ace Facility owners and/or operators, Prime Metals is subject to civil penalties for all violations of the Clean Water Act occurring since December 2, 2011.

ii. Discharges of Polluted Storm Water from the Ace Facility in Violation of Receiving Water Limitations C(1) and C(2) of the Storm Water Permit

Receiving Water Limitation C(1) of the 1997 Industrial Permit prohibits storm water discharges and authorized non-storm water discharges to surface water that adversely impact human health or the environment. Discharges that contain pollutants in concentrations that exceed levels known to adversely impact human health or the environment constitute violations of Receiving Water Limitation C(1) of the 1997 Industrial Permit and the Clean Water Act. Receiving Water Limitation C(2) of the 1997 Industrial Permit prohibits storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of an applicable Water Quality Standard ("WQS").[14] Discharges that contain

[13] Specific Conductance

[14] WQSs include pollutant concentration levels determined by the State Board and the EPA to be protective of the Beneficial Uses of the receiving waters. Discharges above WQSs contribute to the impairment of the receiving waters' Beneficial Uses. As noted above, applicable WQSs include, among others, the CTR, 40 C.F.R. § 131.38. The Basin Plan also sets out additional applicable WQSs.

pollutants in excess of an applicable WQS violate Receiving Water Limitation C(2) of the 1997 Industrial Permit and the Clean Water Act.

Storm water sampling demonstrates that discharges from the Ace Facility contained elevated concentrations of pollutants such as lead, copper, and zinc, which can be acutely toxic and/or have sub-lethal impacts on the avian and aquatic wildlife in the Receiving Waters. Storm water sampling at the Ace Facility also demonstrates the discharges contained concentrations of pollutants that cause or contribute to an exceedance of an applicable WQS. The table below sets forth the results of sampling conducted by Ace Facility Owners and/or Operators. Each sample result demonstrates violations of Receiving Water Limitation C(1) and/or Receiving Water Limitation C(2).

Sampling Demonstrating Exceedances of Water Quality Standards

Date of Sample	Sample Location	Constituent	CTR Criteria[15]	Sample Value[16]	Magnitude of Exceedance[17]
2/8/2014	Location #1	Cadmium[18]	.00335	ND[19]	--[20]
2/8/2013	Location #1	Copper	0.0109	0.320	2.94
2/8/2013	Location #1	Lead	0.0506	0.326	6.44
2/8/2013	Location #1	Silver	.00235	ND[21]	--
2/8/2013	Location #1	Zinc	0.097	1.74	17.94
10/9/2013	Location #1	Cadmium	0.00335	ND	--
10/9/2013	Location #1	Copper	0.0109	1.88	172.48
10/9/2013	Location #1	Lead	0.0506	1.88	37.15
10/9/2013	Location #1	Silver	0.00235	ND	--
10/9/2013	Location #1	Zinc	0.097	12.3	126.80
2/8/2014	Location #1	Cadmium	0.00335	ND	--
2/8/2014	Location #1	Copper	0.0109	0.105	9.63
2/8/2014	Location #1	Lead	0.0506	0.194	3.83
2/8/2014	Location #1	Silver	0.00235	ND	--
2/8/2014	Location #1	Zinc	0.097	0.995	10.26

Receiving Water Limitation C(1) and/or Receiving Water Limitation C(2) of the 1997 Industrial Permit are violated each time polluted storm water discharges from the Ace Facility. Information

[15] The CTR criteria for "priority toxic pollutants" are set forth in 40 C.F.R. § 131.38. These criteria are expressed as dissolved metal concentrations in the CTR. However, the Storm Water Permit requires permittees to report their sample results as total metal concentrations. *See* Storm Water Permit, Section B(10)(b). In order to compare the sample results reported in the Ace Facility's Annual Reports with the CTR criteria, Waterkeeper used the CTR criteria converted to total metal concentrations set forth in the State Board's "Water Quality Goals" database, available at http://www.waterboards.ca.gov/water_issues/programs/water_quality_goals/. The formula used to convert the CTR criteria to total metal concentrations is set forth in the CTR at 40 C.F.R. § 131.38(b)(2)(i).

[16] CTR criteria and sample results for this table are measured in units of mg/L.

[17] *See* footnote 11, above.

[18] Certain pollutants, including cadmium, copper, lead, nickel, silver, and zinc, are water hardness dependent. The freshwater CTR limits for metals as a function of total hardness in the table in this Notice Letter are based on a hardness of 80 mg/L

[19] Not detected. Detection limit for Cadmium is .005, which is above CTR criteria.

[20] Magnitude of exceedance was not determined because sample value was not determined.

[21] Not detected. Detection limit for Silver is .005, which is above CTR criteria.

available to Waterkeeper indicates that these violations are ongoing at the Prime Metals Facility and occur every time the Prime Metals Facility Owners and/or Operators discharged storm water from the Facility. Waterkeeper will update the dates of violation when additional information and data become available.

Each time discharges of storm water from the Ace Recycling Facility adversely impact human health or the environment is a separate and distinct violation of Receiving Water Limitation C(1) of the 1997 Industrial Permit and the Clean Water Act. Each time discharges of storm water from the Facility cause or contribute to a violation of an applicable WQS is a separate and distinct violation of Receiving Water Limitation C(2) of the Storm Water Permit and the Clean Water Act. As successor of the Ace Facility owners and/or operators, Prime Metals is subject to civil penalties for all violations of the Clean Water Act occurring at the Ace Recycling Facility since December 2, 2011.

ACE RECYCLING, LLC MONITORING DATA						
No.	**Date**	**Discharge Point**	**Parameter**	**Units**	**Result**	**Benchmark/CTR**
1	12/2/2014	South Sump	Zinc*	mg/L	.717	.12
2	12/2/2014	South Sump	Iron	mg/L	6.22	1.0
3	12/2/2014	South Sump	Aluminum	mg/L	2.8	.75
4	12/2/2014	South Sump	Copper*	mg/L	.197	.013
5	12/2/2014	South Sump	TSS	mg/L	152	100
6	12/2/2014	South Sump	COD	mg/L	240	120
7	5/14/2015	South Sump	Zinc*	mg/L	1.72	.12
8	5/14/2015	South Sump	Lead*	mg/L	.1	.065
9	5/14/2015	South Sump	Iron	mg/L	10.4	1.0
10	5/14/2015	South Sump	Aluminum	mg/L	4.49	.75
11	5/14/2015	South Sump	Copper*	mg/L	.104	.013
12	5/14/2015	South Sump	TSS	mg/L	158	100
13	5/14/2015	South Sump	COD	mg/L	300	120
*California Toxics Rule constituent						

J. Falsification of Reports

Section XVI. of the Industrial Permit requires dischargers to submit Annual Reports by July 15th following each reporting year. The Annual Report must include a completed compliance checklist that indicates whether a discharger has complied with and addressed all applicable requirements of the Permit. (Industrial Permit, §XVI.B.1.). The Permit contains numerous additional provisions which ensure the accuracy of reported information. For example, Section XXI.J. requires dischargers take samples and measurements that are "representative of the monitored activity." Further, the Legally Responsible Person or Duly Authorized Representative must certify all documents submitted via SMARTS. (Industrial Permit, §XXI.K.1.). Any person signing, certifying, or submitting such documents does so under penalty of perjury. (Industrial Permit, §XXI.L.).

Both the Industrial Permit and the Clean Water Act make it unlawful to falsify reports, punishable by a $10,000 fine or by imprisonment, or both. (Industrial Permit, §XXI.N; 33 U.S.C. §1319(c)(1)). In addition to knowing falsification, negligent violation of the Clean Water Act is also punishable through criminal penalties. (33 U.S.C. §1319(c)(1)).

The 2015-2016 Annual Report for the Facility, certified under penalty of perjury by Prime Metals CFO Byung Jung, contains false information. In response to Annual Report question three regarding sampling of the required number of Qualifying Storm Events, Mr. Jung certified that Prime Metals has sampled in accordance with Section XI.A.2. This is false. During the 2015-2016 reporting year, Prime Metals monitored only two Qualifying Storm Events, not the required four. (See Industrial Permit, §XI.B.2.). Prime Metals also failed to collect samples from both of its discharge locations as required pursuant to Section XI.B.4. Instead, Prime Metals sampled only two storm events (12/2/2014 and 5/14/2015) and only one location (south sump). Moreover, Prime Metals failed to monitor its discharges for oil and grease as required. Therefore, Prime Metals and Mr. Jung are in violation of the Industrial Permit and Clean Water Act Section 309.

Every day the Prime Metals Owners and/or Operators fail to submit an accurate Annual Report for the Facility is a separate and distinct violation of the Industrial Permit and Section 301(a) of the Clean Water Act. (33 U.S.C. § 1311(a)). Prime Metals has been in daily and continuous violation of the Industrial Permit's reporting requirements every day since at least July 19, 2016. These violations are ongoing and the Prime Metals Owners and/or Operators will continue to be in violation every day they fail to revise and submit an accurate 2015-2016 Annual Report.

III. Remedies

Upon expiration of the 60-day period, Waterkeeper will file a citizen suit under Section 505(a) of the Clean Water Act for the above-referenced violations. During the 60-day notice period, however, Waterkeeper is willing to discuss effective remedies for the violations noted in this letter. If you wish to pursue such discussions in the absence of litigation, it is suggested that you initiate those discussions immediately. If good faith negotiations are not being made, at the close of the 60-day notice period, Waterkeeper will move forward expeditiously with litigation.

Prime Metals must develop and implement an updated SWPPP, install BMPs to address the numerous and ongoing water quality violations, and implement a robust monitoring and reporting plan. Prime Metals must also submit a corrected 2015-2016 Annual Report. Should the Prime Metals Owners and/or Operators fail to do so, Waterkeeper will file an action against Prime Metals for its prior, current, and anticipated violations of the Clean Water Act. Waterkeeper's action will seek all remedies available under the Clean Water Act § 1365(a)(d). Waterkeeper will also seek the maximum penalty available under the law, which is $37,500 per day for violations prior to November 2, 2015, and $51,570 per day of violations occurring after November 2, 2015. (33 U.S.C. §1319(d); 40 CFR 19.4; Industrial Permit, §XXI.Q.1).

Waterkeeper may further seek a court order to prevent Prime Metals from discharging pollutants. A strong or substantial likelihood of success on the merits of Waterkeeper's claim exists, and irreparable injuries to the public, public trust resources, and the environment will result if the Facility further discharges pollutants into Receiving Waters. The cessation of the Facility's discharge will not cause

substantial harm to others, and the public interest would be served in preventing discharge of pollutants into receiving waters.

Lastly, section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), permits prevailing parties to recover costs, including attorneys' and experts' fees. Waterkeeper will seek to recover all of its costs and fees pursuant to section 505(d).

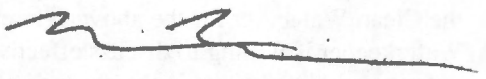
IV. Conclusion

Waterkeeper has retained legal counsel to represent it in this matter. Please direct all communications to Waterkeeper's legal counsel:

Livia Borak Beaudin and Marco A. Gonzalez
livia@coastlawgroup.com
Coast Law Group, LLP
1140 South Coast Highway 101
Encinitas, California 92024
Tel: 760-942-8505

If you wish to pursue settlement discussions in the absence of litigation, please contact Coast Law Group LLP immediately.

Sincerely,



Bruce Reznik
Executive Director
Los Angeles Waterkeeper

SERVICE LIST

VIA U.S. MAIL

Gina McCarthy
Administrator
U.S. Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

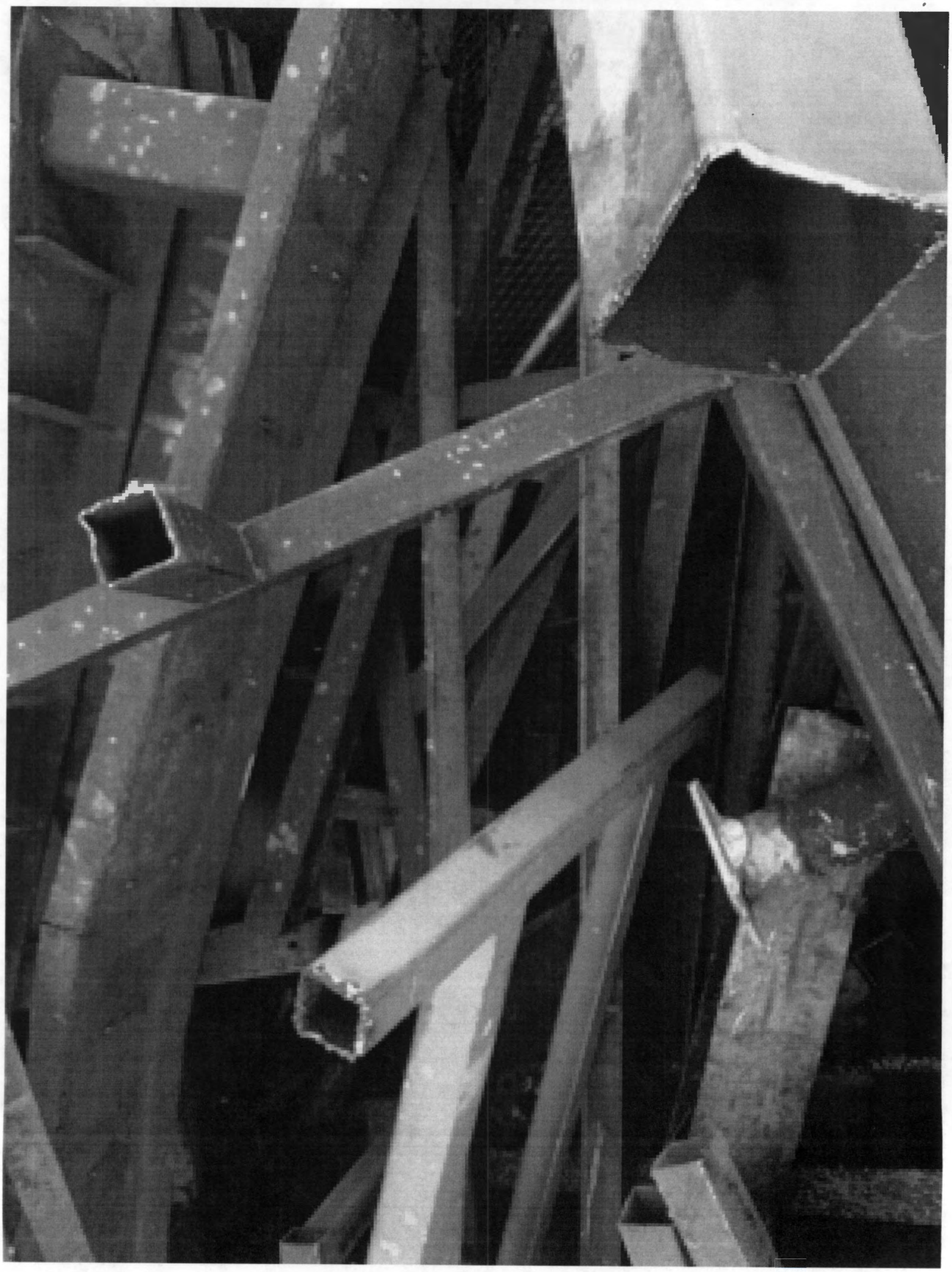
Alexis Strauss
Acting Regional Administrator
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, California 94105

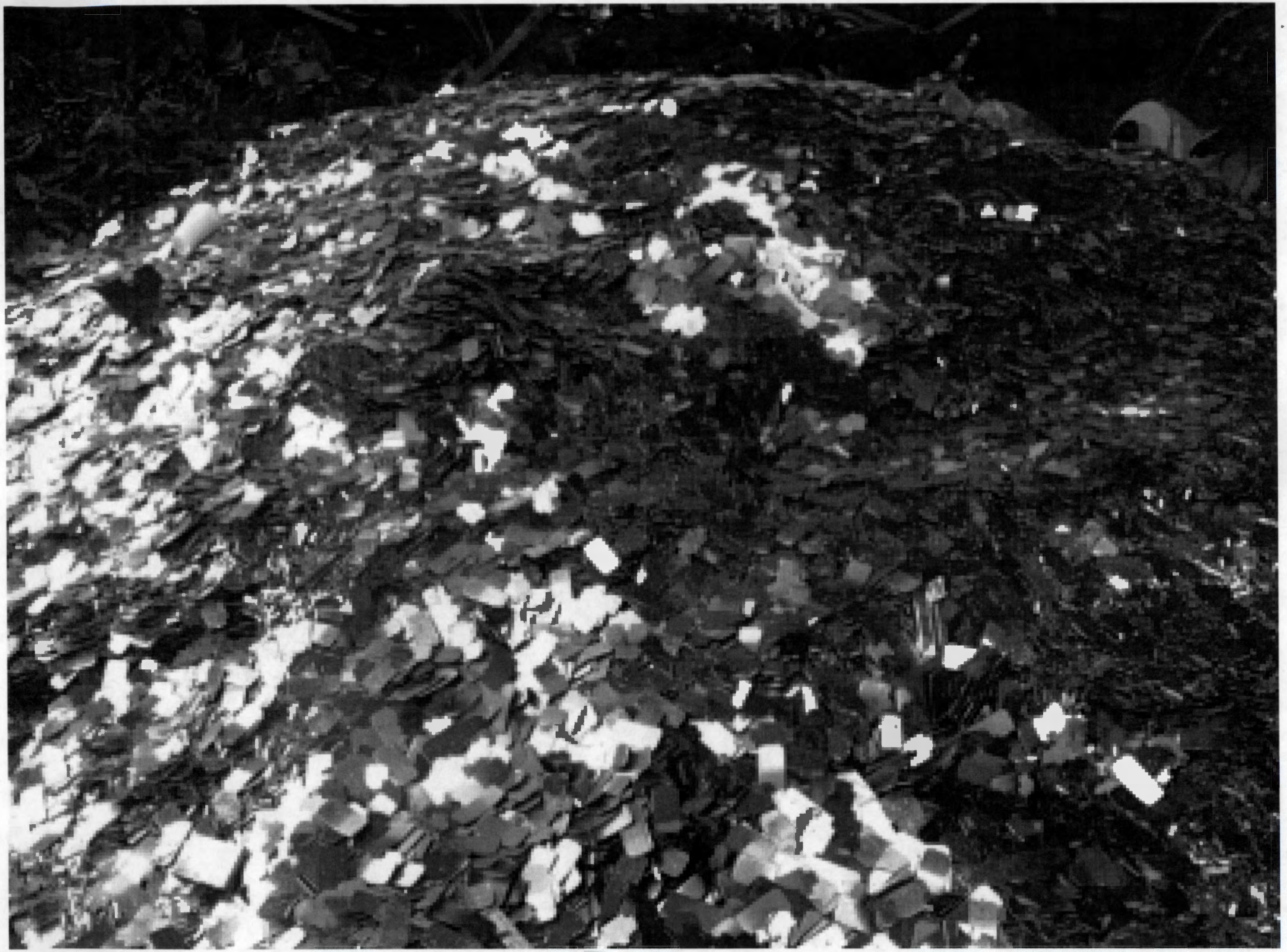
Thomas Howard
Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, California 95812

Samuel Unger
Executive Officer II
Los Angeles Regional Water Quality Control Board
320 West Fourth Street, Suite 200
Los Angeles, California, 90013

EXHIBIT A


KOMATSU





Prime Metals – Los Angeles

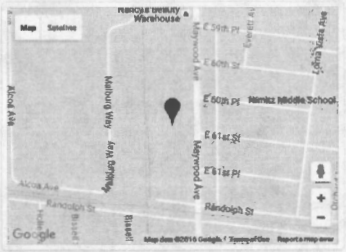
General Contact Information

Telephone
(323) 581-7707
(310) 338-8864 (fax)

Address
6069 Maywood Ave
Huntington Park, CA 90255

Hours Of Operation
7:30 am – 4:30 pm (Monday – Friday)
8:00 am – 12:30 pm (Saturday)

Services
- Ferrous & non-ferrous metals accepted
- Trucking and container service available



SELL TO US! Prime Metals USA is among the largest metal scrap processing and trading companies in the US with two recycling facilities with our headquarters serving as our main brokerage office. To view our complete list of locations, visit our yard locator page.

Overview




Our Roots

Prime Metals Los Angeles (PMLA) was established in early 2010. Located off the 710 freeway in the city of Huntington Park, the yard's proximity to industrial manufacturers and other scrap metal yards makes it a strategic location for receiving, processing and loading containers with commodities to send overseas. While it's true that the momentum and pace has intensified many times over since we began, we still have a long way to go to realize our vision within the scrap metal industry.

Our facility has been constructed and equipped to handle large quantity capacities delivered from our business partners, giving us the ability to accept and process significant quantities on a monthly basis. In 2012, our output reached an average of 5K metric tons of material on a monthly basis. Our indefatigable staff and up-to-date machinery are crucial in our ability to maintain the daily efficiency needed to sustain PMLA's trademark reliability within the scrap metal industry.

Our Company

PMLA in and of itself is a fairly new company. However, the experience from our main headquarters and scrap processing centers scattered across Korea has equipped us with the knowledge and resources to stay above the competition in this voracious industry.

Our business culture's essence rests fully on hard work, diligence and professional customer service. We're backed by recurring suppliers who have partnered with us from day one, helping retain our diverse clientele and raising mutual value on an incremental basis. In the same manner our buying clients have also come to rely on PMLA to deliver for their scrap metal recycling needs when and where they need. We're fortunate to have developed these long-lasting relationships and look forward to earning new partnerships as well with those who share in our vision for long-term financial success.

Products

PMLA purchases material (ferrous and non-ferrous) from a myriad of sources including industrial manufacturers, metal fabricators and other scrap dealers. Because we have the machinery to sort, shear, bale and torch all material according to the exact requirements of our end-users, we maintain flexibility by accepting both processed and non-processed material. Our ability to procure 4-5K metric tons every month and meet the steep demands of our end-users is because we consistently offer our loyal suppliers the top market price and approach these partnerships with a relentless passion, care and most importantly, integrity.

PMLA has earned long-term partnerships with end-users because we have a deep and experienced staff who ensure that every transaction is carried out correctly. Our sales team makes it a priority to have a deep understanding of the value our end-buyers are seeking. Once a deal is made, we ensure that all promises are delivered. Our yard crew is the engine behind not only our ability to fulfill our steep demands but more importantly stay on top of quality control; our logistics team ensure that all materials reach the final destination quickly and efficiently.

Gallery: Prime Metals – Los Angeles













Send Us A Message

Contact us with this form for all general inquiries. One of our representatives will get back to you at the earliest. For sales-related inquiries, please contact Prime Metals: Los Angeles' general manager directly at steven [at] primemetalsusa.com.

First Name *

Last Name *

Email Address *

Phone

Subject

Message *

SUBMIT >

EXHIBIT B

Precipitation .1 inches or Greater

STATION	STATION_NAME	ELEVATION	LATITUDE	LONGITUDE	DATE	PRCP (in)
GHCND:USW00093134	LOS ANGELES DOWNTOWN USC CA US	54.6	34.0236	-118.2911	20150718	0.36
GHCND:USW00093134	LOS ANGELES DOWNTOWN USC CA US	54.6	34.0236	-118.2911	20150915	2.39
GHCND:USW00093134	LOS ANGELES DOWNTOWN USC CA US	54.6	34.0236	-118.2911	20151005	0.4
GHCND:USW00093134	LOS ANGELES DOWNTOWN USC CA US	54.6	34.0236	-118.2911	20151213	0.16
GHCND:USW00093134	LOS ANGELES DOWNTOWN USC CA US	54.6	34.0236	-118.2911	20151219	0.26
GHCND:USW00093134	LOS ANGELES DOWNTOWN USC CA US	54.6	34.0236	-118.2911	20160105	1.61
GHCND:USW00093134	LOS ANGELES DOWNTOWN USC CA US	54.6	34.0236	-118.2911	20160106	0.8
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GHCND:USW00093134	LOS ANGELES DOWNTOWN USC CA US	54.6	34.0236	-118.2911	20160131	0.43
GHCND:USW00093134	LOS ANGELES DOWNTOWN USC CA US	54.6	34.0236	-118.2911	20160217	0.58
GHCND:USW00093134	LOS ANGELES DOWNTOWN USC CA US	54.6	34.0236	-118.2911	20160218	0.21
GHCND:USW00093134	LOS ANGELES DOWNTOWN USC CA US	54.6	34.0236	-118.2911	20160306	0.64
GHCND:USW00093134	LOS ANGELES DOWNTOWN USC CA US	54.6	34.0236	-118.2911	20160307	0.38
GHCND:USW00093134	LOS ANGELES DOWNTOWN USC CA US	54.6	34.0236	-118.2911	20160311	0.52
GHCND:USW00093134	LOS ANGELES DOWNTOWN USC CA US	54.6	34.0236	-118.2911	20160408	0.14

EXHIBIT C

LOS ANGELES WATERKEEPER®

November 21, 2012

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Hyungsun Kim
Yong K. Yi
Justin Lee
Ace Recycling, L.L.C.
6069 Maywood Ave.
Huntington Park, CA 90255

Justin Lee
Ace Metals, LLC
6069 Maywood Ave.
Huntington Park, CA 90255

Registered Agent for Ace Recycling, L.L.C.
Justin Lee
6069 Maywood Ave.
Huntington Park, CA 90255

Registered Agent for Ace Metals, LLC
Justin Lee
16019 Ranch Lane
La Mirada, CA 90638

Re: Notice of Violation and Intent to File Suit Under the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.*

To Whom It May Concern:

I am writing on behalf of Los Angeles Waterkeeper ("Waterkeeper") regarding violations of the Clean Water Act[1] and the State of California's General Industrial Storm Water Permit ("Storm Water Permit")[2] occurring at the Ace Recycling Facility, located at 6069 Maywood Ave., Huntington Park, CA 90255 (hereinafter "Ace Recycling Facility" or "Facility"). Information available to Waterkeeper indicates that Ace Recycling, L.L.C.

[1] Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.*
[2] National Pollutant Discharge Elimination System ("NPDES") General Permit No. CAS000001 [State Water Resources Control Board] Water Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ.

and/or Ace Metals, L.L.C. are the owners and/or operators of Ace Recycling Facility (hereinafter referred to as "Ace Recycling Owners and/or Operators").[3] The owners and/or operators of the Facility have failed to obtain coverage under the Storm Water Permit and continue to operate the Facility without a Permit in violation of the Clean Water Act. *See* 33 U.S.C §§ 1311(a), 1342. ("A failure to comply with or obtain coverage under the Storm Water Permit is a violation of the Clean Water Act.").

The Clean Water Act provides that a facility's owners and/or operators are liable and subject to civil penalties for violations of its provisions. 40 C.F.R. § 122.41(b). As explained below, the owners and/or operators of the Facility are liable and subject to civil penalties for violating the Clean Water Act and the Storm Water Permit.

Section 505(a) of the Clean Water Act authorizes citizen suits "against any person . . . who is alleged to be in violation of . . . an effluent standard or limitation under this Act or ... an order issued ... with respect to such a standard or limitation." 33 U.S.C. § 1365 (a)(1). A citizen must provide notice of the alleged violation(s) and his/her intent to sue at least sixty (60) days prior to initiating a civil action under Section 505(a) of the Clean Water Act. 33 U.S.C. § 1365(b). Notice must be given to the alleged violator, the Administrator of the United States Environmental Protection Agency ("EPA"), the Regional Administrator of the EPA, the executive officer of the water pollution control agency in the state in which the alleged violation occurred, and, if the alleged violator is a corporation, to the registered agent of the corporation. *See* 40 C.F.R. § 135.2.

Waterkeeper submits this letter to you as the responsible owner, officer, and/or operator of Ace Recycling. By this letter, Waterkeeper hereby puts the owners and/or operators of the Ace Recycling Facility on notice that after the expiration of sixty (60) days from the date of this letter, Waterkeeper intends to file an enforcement action in Federal court against the owners and/or operators of the Facility for violating the Storm Water Permit and the Clean Water Act.

I. Background

A. Los Angeles Waterkeeper

Los Angeles Waterkeeper (formerly the Santa Monica Baykeeper) is a non-profit 501(c)(3) public benefit corporation organized under the laws of California with its main office at 120 Broadway, Suite 105, Santa Monica, CA 90401. Founded in 1993, Waterkeeper has approximately 3,000 members who live and/or recreate in and around the Los Angeles area. Waterkeeper is dedicated to the preservation, protection, and defense of the rivers, creeks and coastal waters of Los Angeles County from all sources of pollution and degradation. To further this mission, Waterkeeper actively seeks federal and state implementation of the Clean Water Act. Where necessary, Waterkeeper directly initiates enforcement actions on behalf of itself and its members.

[3] The owner and/or operator of the Facility is identified in greater detail in Section I.B below and referred to hereinafter as "Ace Recycling Owners and/or Operators."

Members of Waterkeeper reside in Los Angeles County, near the Los Angeles River ("L.A. River"). As explained in detail below, the Ace Recycling Owners and/or Operators have continuously discharged storm water associated with industrial activity into the L.A. River and ultimately the Pacific Ocean without obtaining the necessary coverage under the Storm Water Permit and in violation of the Clean Water Act. Waterkeeper members use the L.A. River and the Pacific Ocean to kayak/canoe, bicycle, hike and walk, wade, fish, conduct scientific monitoring and study, and view birds and other wildlife. Additionally, water from the L.A. River flows into the Los Angeles Harbor ("L.A. Harbor") in Long Beach and into the Pacific Ocean where Waterkeeper members engage in scientific study through pollution and habitat monitoring and restoration activities, including Waterkeeper's Kelp Restoration Project and Marine Protected Areas Watch Project.

The unlawful storm water discharge from the Ace Recycling Facility into the L.A. River, the L.A. Harbor and the Pacific Ocean impairs Waterkeeper members' use and enjoyment of these waters. Thus, the interests of Waterkeeper's members have been, are being and will continue to be adversely affected by Ace Recycling Owners and/or Operators' failure to comply with the Clean Water Act and the Storm Water Permit.

B. The Ace Recycling Owners and/or Operators

Information available to Waterkeeper indicates the Ace Recycling Facility located at 6069 Maywood Ave., Huntington Park, CA 90255 is owned and/or operated by Ace Recycling L.L.C. and/or Ace Metals, L.L.C., and Justin Lee is the registered agent of both Ace Recycling L.L.C. and Ace Metals, L.L.C. Information available to Waterkeeper also indicates that Hyungsun Kim, Yong K. Yi and Justin Lee are the Principals and/or Owners of Ace Recycling L.L.C and Justin Lee is the Principal and/or Owner of Ace Metals, L.L.C.

Information available to Waterkeeper indicates that the Ace Recycling Owners and/or Operators have failed to obtain coverage under the Storm Water Permit since the business began its operations. Information available to Waterkeeper indicates that the Facility's industrial activities include but are not limited to the storage, processing, handling, recycling, and transportation of scrap metals. These industrial operations fall within the Storm Water Permit Standard Industrial Classification code of regulated activity ("SIC Code") as 5093 (processing, reclaiming, and wholesale distribution of scrap metal and waste materials). The Storm Water Permit therefore regulates the storm water discharges from the Ace Recycling Facility. *See* Storm Water Permit, Attachment 1 at 2.

C. Storm Water Pollution, Los Angeles River, Los Angeles Harbor and Pacific Ocean

With every significant rainfall event, millions of gallons of polluted rainwater, originating from numerous Los Angeles industrial operations such as the Ace Recycling Facility, pour into storm drains and Los Angeles area surface waters. The consensus among regulatory agencies and water quality experts is that storm water pollution

accounts for more than half of the total pollution entering marine and river environments annually. According to the National Research Council's "Report on Urban Storm Water," storm water runoff is "a principal contributor to water quality impairments of water bodies nationwide."[4] This discharge of pollutants from industrial facilities in storm water contributes to the impairment of downstream waters and aquatic dependent wildlife. A water body is impaired if it is unable to support its beneficial uses, as described below.

Information available to Waterkeeper indicates that the Ace Recycling Facility is about two miles to the west of the L.A. River. Information available to Waterkeeper further indicates that storm water flows from the Ace Recycling Facility enter the nearby municipal storm drain systems and then are carried south by the municipal storm drains until they reach and discharge into L.A. River.

Polluted storm water discharges from industrial facilities, like the Ace Recycling Facility, contribute to the impairment of groundwater, downstream surface waters, and aquatic dependent wildlife. A water body is impaired if it is unable to support its beneficial uses. The Los Angeles Regional Water Quality Control Board ("Regional Board")'s Water Quality Control Plan for the Los Angeles and Ventura County Watersheds ("Basin Plan") lists the Beneficial Uses for waters in the L.A. River. The Beneficial Uses for the waters that receive storm water discharges from the Facility include: ground water recharge (GWR), water contact recreation (REC1), non-contact water recreation (REC2), warm freshwater habitat (WARM), wildlife habitat (WILD), wetland habitat (WET), municipal and domestic supply (MUN), and industrial service supply (IND). *See* Basin Plan, Table 2-1.

The L.A. River is home to natural vegetation and a variety of fish and bird species. The River is increasingly being used for recreation by Los Angeles area residents and visitors alike. For the Los Angeles area aquatic ecosystem to regain its health and endangered species to recover and thrive, unregulated storm water discharges associated with industrial activity, including those from the Facility, must be eliminated.

II. The Ace Recycling Facility and the Associated Discharge of Unpermitted Storm Water

Information available to Waterkeeper indicates ongoing and continuous violations of the Clean Water Act at the Ace Recycling Facility. The Facility has been operating without the necessary Storm Water Permit coverage since at least March 2011, and has been discharging and continues to discharge polluted storm water associated with industrial activity since its founding.

Information available to Waterkeeper indicates that the size of the Ace Recycling Facility is approximately 2 acres. Waterkeeper's visual observations indicate that the Facility is surrounded by a fence and includes both a yard with piles of scrap metal as

[4]National Research Council of the National Academies. *Urban Stormwater Management in the United States*. at vii. (2008).

well as a structure containing piles of scrap metal and other recyclables. Investigations by Waterkeeper indicate that the Ace Recycling Owners and/or Operators engage in the recycling services of scrap metals and large house ware appliances.

Waterkeeper's investigations also confirm that the Ace Recycling Owners and/or Operators conduct scrap recycling operations and store materials at the Facility without adequate cover, thereby exposing pollutants associated with their industrial activities to precipitation, which carries away these pollutants as storm water flows into the L.A. River, the L.A. Harbor and the Pacific Ocean.

A portion of the Ace Recycling Facility site has no roof or other covering. Waterkeeper has observed that the Ace Recycling Owners and/or Operators store scrap metal and other materials in large piles placed directly on the ground without any covering or containment behind the Facility's covered structure, thereby exposing pollutants associated with their industrial activities to storm water flows.

The failure to properly address these pollutant sources results in contaminated flows generated by the Facility during rain events that are discharged from its outfalls, into the municipal storm sewer system and ultimately into the L.A. River, the L.A. Harbor, and the Pacific Ocean.

Waterkeeper's visual observations of the Facility also indicate that the Ace Recycling Owners and/or Operators have not properly developed and/or installed best management practices ("BMPs") at the Facility sufficient to prevent the exposure of pollutants associated with the Facility's industrial operations to storm water and non-storm water, and further, have not properly developed and/or installed BMPs sufficient to prevent the discharge of these pollutants from the Facility during rainstorm events. Consequently, during rain events, storm water carries pollutants from the uncovered operations areas, uncovered scrap piles, ground and floor contaminants, equipment, staging areas, shipping and receiving areas, and other sources directly onto S. Maywood Ave, East 61st Street, and E. 60th Place and into area storm drains. These illegal discharges degrade the beneficial uses of the L.A. River and the Pacific Ocean and negatively impact Waterkeeper's members' use and enjoyment of these waters.

The evidence from visual observations and investigations conducted by Waterkeeper demonstrate that the Ace Recycling Owners and/or Operators have violated and continue to violate the Clean Water Act by discharging storm water from their Facility without obtaining coverage under the Storm Water Permit. The failure to obtain coverage under the Storm Water Permit and the resulting discharges of unregulated storm water from the Ace Recycling Facility are violations of the Storm Water Permit and the Clean Water Act. Perhaps more importantly, these failures have resulted in and continue to contribute to the degradation of the L.A. River, and ultimately, the Pacific Ocean, while threatening and harming a diverse array of wildlife and threatened and endangered species.

III. Ace Recycling and Metals' Violations of the Clean Water Act and the Storm Water Permit

The Clean Water Act expressly prohibits the "discharge of any pollutant" unless such discharge complies with the terms of any applicable NPDES permit, and sections 301, 302, 307, 308, and 402 of the CWA. 33 U.S.C. §§ 1311(a)(1), 1342. "Discharge of a pollutant" means any "addition of a pollutant to navigable waters from any point source." 33 U.S.C. § 1362(12). Pollutant is defined to include "industrial, municipal, and agricultural waste discharged into water." 33 U.S.C. § 1362(6). A point source is "any discernable, confined and discrete conveyance," 33 U.S.C. § 1362(14), and navigable waters are broadly defined as "the waters of the United States." 33 U.S.C. § 1362(7). NPDES permits include both general permits, which are issued under 40 C.F.R. § 122.28 authorizing a category of discharges under the CWA within a geographical area, and individual permits, which are issued to specific facilities.

A. Unpermitted Discharges of Storm Water

In California, the owner and/or operator of any facility that discharges storm water associated with one of the industrial activities listed in Part 122.26(b)(14) of Title 40 of the Code of Federal Regulations and Attachment 1 of the Storm Water Permit must obtain coverage under the Storm Water Permit. *See* 33 U.S.C. §§ 1311(a), 1342; 40 C.F.R. § 122.26(c)(1); Storm Water Permit, Fact Sheet pp. VI-VII.

Metal scrapyards, salvage yards and recycling facilities engaged in assembling, breaking up, sorting, and wholesale distribution of scrap and waste material are among the facilities listed in Attachment 1 of the Storm Water Permit. Storm Water Permit, Attachment 1 at 2. Consequently, since the Ace Recycling Facility is engaged in the recycling, breaking up, sorting and wholesale distribution of scrap metals and other scrap and waste material, the owners and/or operators of the Facility must obtain coverage under the Storm Water Permit. *See* 33 U.S.C. §§ 1311(a), 1342; 40 C.F.R. § 122.26(c)(1); Storm Water Permit, Fact Sheet pp. VI-VII. An industrial facility operator who has not obtained coverage under the Storm Water Permit must submit an application for an individual NPDES permit. *Id.*

Furthermore, the owner and/or operator of such facility must comply with the terms of the Storm Water Permit in order to lawfully discharge pollutants. *See* 33 U.S.C. §§ 1311(a), 1342; 40 C.F.R. § 122.26(c)(1); Storm Water Permit, Fact Sheet p. VII. The Storm Water Permit imposes on industrial facilities specific requirements related to the quality of their storm water and non-storm water discharges. *See e.g.,* Storm Water Permit at 3 (Section A, Discharge Prohibitions), pp. 3-4 (Section B, Effluent Limitations), pp. 4-5 (Section C, Receiving Water Limitations), pp. 5-6 (Section D, Special Conditions). Any noncompliance with the conditions of the Storm Water Permit "constitutes a violation of the Clean Water Act and the Porter-Cologne Water Quality Control Act and is grounds for … enforcement action." Storm Water Permit at 46.[5]

[5] A copy of the current Storm Water Permit is attached as Exhibit A.

Information available to Waterkeeper indicates that the Ace Recycling Owners and/or Operators have failed to obtain coverage under the Storm Water Permit. Moreover, Ace Recycling Owners and/or Operators have failed to apply for and obtain coverage under an individual NPDES Permit. By failing to apply for Storm Water Permit coverage and continuing to discharge polluted storm water into the L.A. River, L.A. Harbor and the Pacific Ocean without an NPDES Permit, the Ace Recycling Owners and/or Operators have continuously violated the Storm Water Permit and the Clean Water Act since at least 2011. *See* 33 U.S.C. §§ 1311(a), 1342; 40 C.F.R. § 122.26(c)(1).

Information available to Waterkeeper indicates that the Ace Recycling Facility has illegally discharged storm water into area storm drains, L.A. River, L.A. Harbor and the Pacific Ocean during every measurable precipitation event at the facility on at least 23 days since March 4, 2011.[6]

To obtain authorization for continued and future storm water discharges associated with industrial activity under the Storm Water Permit, each facility operator must submit an NOI. Storm Water Permit, Fact Sheet, p. II. The Storm Water Permit requires that a facility operator submit an NOI for each industrial facility that is required by EPA regulations to obtain a permit. *See* Storm Water Permit, Provisions E(1-3); Attachment 3, NOI Instructions.

B. Failure to Prepare and Implement a SWPPP and a Monitoring and Reporting Program

A facility's failure to obtain coverage under the Storm Water Permit or to comply with the requirements of the Storm Water Permit is a violation of the Clean Water Act. *See* 40 C.F.R. § 122.41(a); Storm Water Permit, Section C(1). Information available to Waterkeeper indicates that Ace Recycling Owners and/or Operators have failed to prepare and implement a Storm Water Pollution Prevention Plan ("SWPPP") and a Monitoring and Reporting Program, both requirements of the Storm Water Permit. As a result, Ace Recycling Owners and/or Operators have violated the Storm Water Permit.

1. **Failure to Develop, Implement, and/or Revise an Adequate Storm Water Pollution Prevention Plan (SWPPP)**

The Ace Recycling Owners and/or Operators have also failed to develop and implement an adequate Storm Water Pollution Prevention Plan ("SWPPP") as required by Section A of the Storm Water Permit. Section A(1) and Provision E(2) of the Storm Water Permit require dischargers to have developed and implemented a SWPPP by October 1, 1992, or prior to beginning industrial activities, that meets all of the requirements of the Storm Water Permit. The Storm Water Permit's SWPPP requirement has two objectives: (1) to examine and identify potential sources of polluted storm water discharge from the Facility; and (2) to develop and implement facility-specific BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges. Storm Water Permit, Section A(2). To ensure its effectiveness, the SWPPP

[6] A list with all significant rain events at the facility is attached as Exhibit B.

must be evaluated on an annual basis pursuant to the requirements of Section A(9), and must be revised as necessary to ensure compliance with the Storm Water Permit. *Id.*, Sections A(9), A(10).

Sections A(3) – A(10) of the Storm Water Permit set forth the requirements for a SWPPP. Among other requirements, the SWPPP must include: a site map showing the facility boundaries, storm water drainage areas with flow patterns, nearby water bodies, the location of the storm water collection, conveyance and discharge system, structural control measures, areas of actual and potential pollutant contact, and areas of industrial activity (Section A(4)); a list of significant materials handled and stored at the site (Section A(5)); and, a description of potential pollutant sources including industrial processes, material handling and storage areas, dust and particulate generating activities, a description of significant spills and leaks, a list of all non-storm water discharges and their sources, and a description of locations where soil erosion may occur (Section A(6)). Sections A(7) and (8) require an assessment of potential pollutant sources at the facility and a description of the BMPs to be implemented at the facility that will reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges, including structural BMPs where non-structural BMPs are not effective.

The Ace Recycling Owners and/or Operators have not developed and/or implemented a SWPPP that meets the requirements of the Storm Water Permit. Every day the Ace Recycling Owners and/or Operators operate the Ace Recycling Facility with an inadequately developed and/or implemented SWPPP constitutes a violation of the Storm Water Permit and Section 301(a) of the Clean Water Act, 33 U.S.C § 1311(a). The Ace Recycling Owners and/or Operators have therefore been in daily and continuous violation of the Storm Water Permit's SWPPP requirements every day since at least March 4, 2011. These violations are ongoing and the Ace Recycling Owners and/or Operators will continue to be in violation every day that they fail to develop and implement an adequate SWPPP for the Ace Recycling Facility. Waterkeeper will include additional violations when information becomes available. The Ace Recycling Owners and/or Operators are subject to civil penalties for all violations of the Storm Water Permit and the Clean Water Act since at least March 4, 2011.

2. **Failure to Develop and Implement a Monitoring and Reporting Program**

Section B(1) and Provision E(3) of the Storm Water Permit require facility operators to develop and implement an adequate Monitoring and Reporting Program ("MRP") by October 1, 1992 or prior to the commencement of industrial activities at a facility. The objective of the MRP requirement is to: "(1) demonstrate compliance with the Storm Water Permit; (2) aid in the implementation of the SWPPP; and (3) measure the effectiveness of the BMPs in reducing or preventing pollutants in storm water discharges and authorized non-storm water discharges." Storm Water Permit at x. The MRP must therefore ensure that BMPs are effectively reducing and/or eliminating pollutants at the facility, and that they are evaluated and revised whenever appropriate. *Id.*, Section B(2).

Sections B(3) through B(16) of the Storm Water Permit set forth the MRP requirements. Specifically, Section B(3) requires dischargers to conduct quarterly dry season visual observations of all drainage areas within their facility for the presence of authorized and unauthorized non-storm water discharges. Section B(4) requires dischargers to conduct visual observations of storm water discharges from one storm event per month during the wet season (defined as October 1-May 30). Sections B(3) and (4) further require dischargers to document the presence of any floating or suspended material, oil and grease, discolorations, turbidity, odor and the source of any pollutants. Dischargers must maintain records of observations, observation dates, locations observed, and responses taken to eliminate unauthorized non-storm water discharges and to reduce or prevent pollutants from contacting non-storm water and storm water discharges. Storm Water Permit, Sections B(3) and (4). Finally, dischargers must revise the SWPPP to ensure that BMPs are effectively reducing and/or eliminating pollutants at the facility. *Id.*, Section B(4).

Sections B(5) and (7) of the Storm Water Permit require dischargers to visually observe and collect samples of storm water discharges from all locations where storm water is discharged. Storm water samples must be collected during the first hour of discharge from (1) the first storm event of the wet season, and (2) at least one other storm event in the wet season." *Id.*, Section B(5)(a). The Storm Water Permit allows permittees to comply with the MRP requirements individually or participate in a group monitoring program. *Id.*, Section B(15).

Storm water samples must be analyzed for total suspended solids ("TSS"), pH, specific conductance, and total organic carbon ("TOC") or oil and grease. *Id.*, Section B(5)(c). The Facility, as a scrap metal recycling facility classified as SIC Code 5093, must also analyze storm water samples for iron, lead, aluminum, zinc, and chemical oxygen demand, or as required by the Regional Board. *Id.*; *see also id.*, Table D, Sector N.

Information available to Waterkeeper indicates that the Ace Recycling Owners and/or Operators have not sampled or analyzed their storm water discharges or conducted the required visual observations since at least March 4, 2011.

In addition to the requirements to sample and analyze storm water discharges and conduct visual observations, Section B(14) of the Storm Water Permit requires dischargers to submit an Annual Report to the Regional Board by July 1 of each year. The Annual Report must include a summary of visual observations and sampling results, an evaluation of the visual observation and sampling and analysis results, laboratory reports, the annual comprehensive site compliance evaluation report, an explanation of why a facility did not implement any activities required, and records specified in Section B(13). Storm Water Permit, Section B(14). Waterkeeper's investigation reveals that the Ace Recycling Owners and/or Operators have not submitted the required Annual Report since at least March 4, 2011.

Every day that the Ace Recycling Owners and/or Operators operate the Facility without conducting the requisite visual observations and storm water sampling and analysis, and without submitting annual reports is a separate and distinct violation of the Storm Water Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. §1311(a). The Ace Recycling Owners and/or Operators have been in daily and continuous violation of the Storm Water Permit's MRP requirements every day since at least March 4, 2011. These violations are ongoing and the Ace Recycling Owners and/or Operators will continue to be in violation every day that they fail to revise, develop, and/or implement an adequate MRP for the Facility. Waterkeeper will include additional violations when information becomes available. The Ace Recycling Owners and/or Operators are subject to penalties for all violations of the Storm Water Permit and the Clean Water Act occurring since at least March 4, 2011.

C. Relief and Penalties Sought for Violations of the Clean Water Act

Pursuant to Section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. §19.4, each separate violation of the Clean Water Act subjects the violator to a penalty for all violations occurring during the period commencing five years prior to the date of a notice of intent to file suit. These provisions of law authorize civil penalties of up to $27,500 per day per violation for all Clean Water Act violations between January 30, 1997 and March 15, 2004, $32,500 per day per violation for all Clean Water Act violations between March 15, 2004 and January 12, 2009, and $37,500 per day per violation for all Clean Water Act violations after January 12, 2009. In addition to civil penalties, Waterkeeper will seek injunctive relief preventing further violations of the Clean Water Act pursuant to Sections 505(a) and (d), 33 U.S.C. §1365(a) and (d), declaratory relief, and such other relief as permitted by law. Lastly, pursuant to section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), Waterkeeper will seek to recover its costs, including attorneys' and experts' fees, associated with this enforcement action.

Waterkeeper now places the Ace Recycling Owners and/or Operators on notice of their violations of the Clean Water Act and the Storm Water Permit for each day of violation occurring at the Facility since March 4, 2011.

IV. Conclusion

Upon expiration of the 60-day notice period, Waterkeeper will file a citizen suit under Section 505(a) of the Clean Water Act for the above-referenced violations. During the 60-day notice period, however, Waterkeeper is willing to discuss effective remedies for the violations noted in this letter. If you wish to pursue such discussions in the absence of litigation, it is suggested that you initiate those discussions immediately. If good faith negotiations are not being made, at the close of the 60-day notice period, Waterkeeper will proceed expeditiously with litigation. ***We may elect not to initiate litigation if Ace Recycling applies for coverage under the Storm Water Permit and***

develops and implements an adequate SWPPP and MRP within 60 days from the date of this letter.

Please direct all communications to Los Angeles Waterkeeper:

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Sincerely,

Liz Crosson
Los Angeles Waterkeeper

Tatiana Gaur
Los Angeles Waterkeeper

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